



Office of the Attorney General
State of Texas

July 14, 1993

DAN MORALES

ATTORNEY GENERAL

Mr. Norman D. Cunningham
Assistant Superintendent
Purchasing and Insurance
Cypress-Fairbanks Independent
School District
P. O. Box 692003
Houston, Texas 77269-2003

OR93-453

Dear Mr. Cunningham:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 18841.

The Cypress-Fairbanks Independent School District (the district) received an open records request for "a list of the teachers and parents" who accompanied a group of the district's students on a particular field trip, and you have submitted to this office for review documents you believe to be responsive to the request. We note, however, that the only documents you have submitted to this office were created *after* the district's receipt of the open records request. The provisions of the Open Records Act apply only to information in existence at the time an open records request is made; the act does not require a governmental body to prepare new information in response to an open records request. *See, e.g.,* Open Records Decision No. 452 (1986) at 2-3. Further, the Open Records Act does not require a governmental body to answer factual questions. *See* Open Records Decision No. 379 (1983) at 4. Consequently, the documents you have submitted to this office do not come within the ambit of Mr. Peterson's request and accordingly need not be released.

With regard to any other record the district may possess that comes within the ambit of the request, we note that the district received the open records request on January 22, 1993, and that you requested a decision from this office on February 5, 1993. Consequently, you failed to request a decision within the ten days required by section 7(a) of the act.

Section 7(a) of the act requires a governmental body to release requested information or to request a decision from the attorney general within ten days of receiving

a request for information the governmental body wishes to withhold. When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App. - Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App. - Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.*

Consequently, if the district does in fact possess other requested documents that were created prior to its receipt of the open records request, those records are presumed to be public and must be released absent a demonstration of compelling reasons for withholding the information.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,

A handwritten signature in black ink, appearing to read "James Tourtelott", with a stylized flourish at the end.

James Tourtelott
Assistant Attorney General
Open Government Section

JET/RWP/jmn

Ref: ID# 18841
ID# 18928
ID# 19005
ID# 19287
ID# 19369

cc: Mr. Carl Peterson
Attorney at Law
12103 Ryewater
Houston, Texas 77089